

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Shawn Evans
11-A-0681,

Plaintiff,

v.

Officer P. Murphy et al.,

Defendants.

12-CV-365
Decision and Order

On May 10, 2012, the pro se plaintiff commenced this action, alleging claims under 42 U.S.C. § 1983. Docket Item 3. On July 19, 2013, this Court referred this case to United States Magistrate Judge Hugh B. Scott for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B), Docket Item 50, and the plaintiff subsequently filed 11 motions seeking extensions, discovery, and prospective or injunctive relief. Docket Items 117, 119, 120, 121, 122, 123, 126, 127, 128, 129, and 130. On February 1, 2017, Judge Scott issued a Decision and Order and Report and Recommendation (“D&O/R&R”) finding that the plaintiff's dispositive motions, Docket Items 123 and 126, should be denied; granting in part the plaintiff's motion for video footage, Docket Item 127; and denying all other motions, Docket Items 117, 119, 120, 121, 122, 128, 129, and 130.

On March 9, 2017, the plaintiff objected to the D&O/R&R. Docket Item 144.¹ On April 14, 2017, the defendants responded to the objections. Docket Item 146.

¹ Objections to the R&R must be filed within 14 days. 28 U.S.C. § 636(b)(1); Fed R. Civ. Pro. 72. Here, the R&R was filed on February 1, 2017, but the objections were

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's recommendation to which objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). On the other hand, in reviewing decisions on non-dispositive pre-trial motions, a district court defers to the magistrate judge and should reconsider the decision only when it is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A).

This Court has carefully reviewed the D&O/R&R, the objections, and the response. Based on that review, the Court accepts and adopts Judge Scott's recommendation to deny the plaintiff's motions for prospective relief, Docket Items 123 and 126, and declines to reconsider the decision and order pertaining to the non-dispositive pretrial motions, Docket Items 117, 119, 120, 121, 122, 127, 128, 129, and 130.

For the reasons stated above and in the R&R and D&O, the plaintiff's motions for prospective and injunctive relief, Docket Items 123 and 126, are DENIED; and the court declines to reconsider the remaining motions, Docket Items 117, 119, 120, 121, 122,

filed on March 9, 2017, well after the fourteen days expired. That alone could be the basis to decline review of the objections. See *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point."). Nevertheless, especially in light of the plaintiff's pro se status, this Court grants the plaintiff leave to object or appeal nunc pro tunc and considers his arguments.

127, 128, 129, and 130, as Judge Scott's decision was neither contrary to law nor clearly erroneous.

SO ORDERED.

Dated: June 27, 2018
Buffalo, New York

s/Lawrence J. Vilardo

LAWRENCE J. VILARDO

UNITED STATES DISTRICT JUDGE